United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

OCTOBER TERM, 1900.

No. 1008

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JOSEPH E. SARDO, APPELLANT,

vs.

WALTER M. MORELAND AND FREDERICK L. GRUNEWALD.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JULY 14, 1900.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 25, 1900.

In the Court of Appeals of the District of Columbia.

JOSEPH E. SARDO, Appellant,
vs.
WALTER M. MORELAND and FREDERICK L. GRUNEWALD. } No. 1008.

a Supreme Court of the District of Columbia.

JOSEPH E. SARDO
vs.
WALTER M. MORELAND and FREDERICK L. GRUNEWALD, Trading as W. M. Moreland & Company. } No. 43322. At Law.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration.*

Filed September 7, 1899.

In the Supreme Court of the District of Columbia.

JOSEPH E. SARDO, Plaintiff,
vs.
WALTER M. MORELAND and FREDERICK L. GRUNEWALD, Trading as W. M. Moreland and Company, Defendants. } At Law. No. 43322.

The plaintiff sues the defendants, Walter M. Moreland and Frederick L. Grunewald, copartners, trading and doing business under the firm name and style of W. M. Moreland and Company, for that, at the time of the occurrences hereinafter mentioned, the plaintiff was employed as a servant and agent of said defendants, to wit, at their stands or stalls in the Washington market, in the city of Washington, District of Columbia; and for that, at the special instance and request of said defendants, their servants and agents, the plaintiff, to wit, on the 28th day of November, 1898, was engaged in and was endeavoring to pull up, elevate, and hoist, to wit, above a certain stand or stall of the said defendants in the Washington market aforesaid a certain deer; and for that it was then and there the duty of said defendants to supply the plaintiff

reasonably safe appliances and adopt reasonably safe methods for the pulling up or hoisting of said certain deer; yet the defendants nevertheless, in wrongful and flagrant disregard and violation of their duty in the premises, then and there would not and did not provide reasonably safe tackle and appliances and adopt reasonably safe methods and provide a sound and safe rope for
2 pulling up, elevating, and hoisting said deer, but adopted a primitive, crude, unsafe, and dangerous method of doing said work, and provided primitive, improper, unsafe, and dangerous appliances for doing said work, and provided a weak, unsound, and defective rope for doing said work; and for that, while the plaintiff was then and there aiding and assisting the defendants, their servants and agents, in pulling up, elevating, and hoisting said deer, and without any negligence on his part, and without notice or knowledge on his part of the infirmities and defects in said appliances, method, and rope aforesaid, and of which faults and infirmities in said appliances, method, and rope the said defendants had notice and knowledge, or should have had such notice and knowledge in the exercise of due care and prudence, and while said plaintiff was exercising due care the said rope, by reason of its weak, unsafe, and defective condition, and the primitive, improper, unsafe, and dangerous appliances and method used, separated and broke suddenly; whereupon and by reason whereof the plaintiff was precipitated violently to and upon the ground, and thereby one of the hips of the said plaintiff became and was fractured, bruised, and broken, and the said plaintiff was greatly wounded and permanently injured, insomuch that the said plaintiff then and there became and was sick, sore, lame, and disordered for a long space of time, to wit, from thence hitherto, during all of which time the said plaintiff suffered and underwent great pain, and was hindered and prevented from carrying on, transacting, and proceeding in his lawful and necessary affairs and business by him during that time to be performed and transacted, and thereby lost and was deprived of great gains and profits which had been
3 accustomed to arise and accrue, and which otherwise would have continued to arise and accrue, to the said plaintiff from the transacting and carrying on of the same, and also by means of the premises aforesaid the said plaintiff was forced and obliged to and did then and there pay, lay out, expend, and incur liability for divers large sums of money, amounting in the whole to the sum of $500.00, in and about his necessary support and maintenance, to wit, at the city of Washington, in the District of Columbia, aforesaid.

Whereof said plaintiff saith he is injured and hath sustained damage to the amount of $15,000, and therefore he brings this suit.

Second count. The plaintiff also sues the defendants, copartners, trading and doing business under the firm name and style of W. M. Moreland and Company, for that, at the time of the occurrence hereinafter mentioned, the said defendants were conducting and operating stands or stalls, to wit, in the Washington market, in the

city of Washington, District of Columbia, for the sale of poultry, fish, and game; and for that, to wit, on the twenty-eighth day of November, 1898, the said defendants, by themselves or by their servants, were engaged in and endeavoring to pull up, elevate, and hoist above one of their stands or stalls a certain deer then and there in their possession, and said defendants were possessed of certain appliances, devices, and rope, by means of which it was the purpose of said defendants, by themselves or by their servants, to pull up, elevate, and hoist the deer aforesaid; and the plaintiff says that at the special instance and request of said defendants and of their servants he undertook to aid and assist said servants in
4 the said work of pulling up, elevating, or hoisting said deer by means of the appliances, devices, and rope aforesaid; and plaintiff says it was then and there the duty of the said defendants to provide safe and proper tackle, appliances, and devices and a safe, strong, and sound rope to be used in said work of pulling up, elevating, and hoisting said deer, but, not regarding their said duty in the premises, the said defendants would not and did not provide safe and proper tackle, appliances, and devices and a safe, strong, and sound rope to be used in said work, but provided the appliances and devices and the rope aforesaid, which said appliances and devices were primitive, crude, unsafe, defective, and dangerous, and which said rope was weak, worn, and defective; and plaintiff says that while he was then and there aiding and assisting the defendants, their servants and agents, in pulling up, elevating, and hoisting said deer, and without notice or knowledge on his part of the infirmities and defects in said appliances, devices, and rope aforesaid, and of which faults and infirmities in said appliances, devices, and rope the said defendants had notice and knowledge, or should have had such notice or knowledge in the exercise of due care and prudence, and while he was exercising due care on his part, the said rope, by reason of its weak, unsound, and defective condition and the primitive, unsafe, defective, and dangerous appliances and devices used, separated and broke, precipitating said plaintiff violently to and upon the ground, and thereby one of the hips of said plaintiff became and was fractured, bruised, and broken, and the said plaintiff was greatly wounded and permanently injured, insomuch that the said plaintiff then and there became and was sick, sore, lame, and disordered
5 for a long space of time, to wit, from thence hitherto, during all of which time the said plaintiff suffered and underwent great pain, was hindered and prevented from carrying on, transacting, and proceeding in his lawful and necessary affairs and business by him during that time to be performed and transacted, and thereby lost and was deprived of great gains and profits which had been accustomed to arise and accrue and which otherwise would have continued to arise and accrue to the said plaintiff from the transacting and carrying on of the same; and also by means of the premises aforesaid the plaintiff was forced and obliged to and did then and there pay, lay out, expend, and incur liability for divers large sums of money, amounting in the whole to the sum of $500.00,

in and *above* his necessary support and maintenance, to wit, at the city of Washington, in the District of Columbia, aforesaid.

Where*of* said plaintiff saith he is injured and hath sustained damage to the amount of $15,000, and therefore he brings this suit.

(Sig.) C. H. MERILLAT,
C. M. SMITH,
Attorneys for Plaintiff.

NOTE.—The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

C. H. MERILLAT,
C. M. SMITH,
Attorneys for Plaintiff.

6 *Plea.*

Filed September 20, 1899.

In the Supreme Court of the District of Columbia.

JOSEPH E. SARDO
vs.
WILLIAM M. MORELAND ET AL. } At Law. No. 43322.

Come now the defendants in the above-entitled cause and for plea to the second count of the plaintiff's declaration say they are not guilty in manner and form as the plaintiff has declared against them.

BIRNEY & WOODARD,
Attorneys for Defendants.

Motion to Elect Cause of Action.

Filed September 20, 1899.

In the Supreme Court of the District of Columbia.

JOSEPH E. SARDO
vs.
WALTER M. MORELAND ET AL. } Law. No. 43322.

Come now the defendants in the above-entitled cause and show to the court that the plaintiff in the above-entitled cause, by the first count of his declaration, charged two separate and distinct causes of action against these defendants—that is to say, first, that these defendants did not provide reasonably safe tackle and appli-
ances, etc., and, second, that they did not adopt reasonably
7 safe methods, etc.—whereby these defendants cannot plead singly to the said declaration. Wherefore they move the court that the said plaintiff be required to elect upon which of said

claims he will proceed against the defendants under his said first count, and that the other of said charges be stricken from the said count.

BIRNEY & WOODARD,
Attorneys for Defendants.

Supreme Court of the District of Columbia.

FRIDAY, *October* 20, 1899.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

The following cases were heard by Justice Cole:

JOSEPH E. SARDO, Plaintiff,
v.
WALTER M. MORELAND ET AL., Defendants. } At Law. No. 43322.

Upon hearing the motion of defendants to require the plaintiff to elect upon which claim he will proceed, and to strike the remaining claim from the first count of the declaration, it is considered that said motion be, and hereby is, overruled.

8 *Plea.*

Filed October 23, 1899.

In the Supreme Court of the District of Columbia.

JOSEPH E. SARDO
vs.
WALTER M. MORELAND ET AL. } Law. No. 43322.

Come now here the defendants, and for plea to the plaintiff's first count say that they are not guilty.

BIRNEY & WOODARD,
Attorneys for Plaintiff.

Joinder of Issue.

Filed October 27, 1899.

In the Supreme Court of the District of Columbia.

JOSEPH E. SARDO
vs.
WALTER M. MORELAND ET AL. } No. 43322.

The plaintiff joins issue on the defendants' pleas to the declaration herein.

CHARLES H. MERILLAT,
C. M. SMITH,
Attorneys for Plaintiff.

9 *Memorandum.*

May 9, 1900.—Verdict for defendants.

Supreme Court of the District of Columbia.

FRIDAY, *May* 18, 1900.

Session resumed pursuant to adjournment, Mr. Justice Cole presiding.

* * * * * * *

JOSEPH E. SARDO, Plaintiff,
vs.
WALTER M. MORELAND and FREDERICK L. Grunewald, Trading as W. M. Moreland & Company, Defendants. } At Law. No. 43322.

Upon hearing the motion of the plaintiff for a new trial, it is considered that said motion be, and hereby is, overruled and judgment on verdict ordered. Therefore it is considered that the plaintiff take nothing by his suit, and that the defendants go thereof without day and recover against the plaintiff their costs of defense, to be taxed by the clerk, and have execution thereof.

The plaintiff notes an appeal to the Court of Appeals.

10 *Appeal.*

Filed May 22, 1900.

In the Supreme Court of the District of Columbia, the 22 Day of May, 1900.

JOSEPH SARDO
vs.
W. M. MORELAND and FREDERICK L. GRUNEwald, Trading as W. M. Moreland & Co. } Law. No. 43322.

The clerk of said court will please enter an appeal to the Court of Appeals of the District of Columbia from the judgment rendered in this cause on the eighteenth day of May, A. D. 1900; also issue citation against the plaintiff.

CHAS. MAURICE SMITH,
CHAS. H. MERILLAT,
Attorneys for Plaintiff.

11 In the Supreme Court of the District of Columbia.

JOSEPH E. SARDO
vs.
WALTER M. MORELAND and FREDERICK L. Grunewald, Trading as W. M. Moreland & Company. } At Law. No. 43322.

The President of the United States to Walter M. Moreland and Frederick L. Grunewald, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the clerk's office, the supreme court of the District of Columbia, on the 22d day of May, 1900, wherein Joseph E. Sardo is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 22d day of May, in the year of our Lord one thousand nine hundred (1900).

J. R. YOUNG, *Clerk*,
By W. E. WILLIAMS,
Ass't Clerk.

Service of the above citation accepted this 24 day of May, 1900.
BIRNEY & WOODARD,
Attorney- for Appellee.

12 *Memorandum.*

June 7, 1900.—Appeal bond filed.

Supreme Court of the District of Columbia.

FRIDAY, *June* 22, 1900.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

By Justice Cole.

JOSEPH SARDO, Plaintiff,
vs.
W. M. MORELAND ET AL., Defendants. } At Law. No. 43322.

Now again comes here the plaintiff, by his attorneys, and tenders to the court here his bill of exceptions taken during the trial of this case, and prays that the same may be duly signed, sealed, and made part of the record, now for then, which is accordingly done.

13 *Bill of Exceptions.*

Filed June 22, 1900.

In the Supreme Court of the District of Columbia.

JOSEPH SARDO
vs.
WALTER M. MORELAND and FREDERICK L. Grunewald, Trading as W. M. Moreland & Co. } No. 43322. Law.

Be it remembered that the above-entitled cause came on for trial on the eighth day of May, A. D. 1900, before Mr. Justice Cole and a jury, Messrs. Charles Maurice Smith and Charles H. Merillat appearing on behalf of the plaintiff and Mr. A. A. Birney appearing on behalf of the defendant-.

And thereupon the plaintiff, to maintain the issues upon his part joined, gave evidence by the following witnesses, tending to prove as follows:

JOSEPH SARDO, the plaintiff, testified that he is 48 years old; that in September, 1898, he was employed by the defendant company as a salesman and to assist generally at their stalls in the Centre market; that shortly after employment he was assigned to the poultry stalls of the defendants, which are about thirty feet from the game stalls of said defendants and most of them in another aisle; that one Frank Reed was in charge of the poultry stalls, and that on entering on his duties at the poultry stalls witness was directed by defendant Moreland to obey the orders of Frank Reed,
14 who Moreland said would instruct him and direct him what he should do; that he always obeyed any orders received from said Reed and recognized his orders as much as he did those of Mr. Moreland or Mr. Grunewald; that he always reported to said Reed on beginning work in the morning and also before leaving for the day. Reed and witness did the same kind of work. On November 28, 1898, Frank Reed said to witness, "Come on, Joe, and help them raise the deer at the game stand." Thereupon witness went with Reed to the game stand, where John T. Lipscomb and the colored man, Jim Carter, were endeavoring to raise a deer above the game stand to the roof of the market overhead so as to suspend it from above; that everything was ready for the raising of the deer when witness and Frank Reed got there, and they began at once to pull on the rope to hoist the deer. Witness had not helped to adjust the rope, nor was he present when this was done. When witness came up to the game stand Mr. Moreland was standing in the aisle in front of the cashier's box or office and in plain sight of the game stand. He was talking to his partner, Mr. Grunewald, who was in the cashier's box. The cashier's box is 18 or 20 feet from the game stand. Its sides are built of glass save the lower two or three feet, and one in it can see what is going on in all direc-

tions. It is across the aisle from the game stand and a little further up the market. Witness and Reed pulled on the rope, but could not hoist the deer. Then Reed got up on a barrel and witness followed and also climbed on the barrel. Reed's purpose in getting up, witness supposed, was to swing off. He didn't know any other reason why they should get on the barrel except for that and to get a good purchase. When on the barrel he and Reed pulled, Lipscomb and
15 Carter boosting the deer up from beneath and aiding them as far as possible. They were able to hoist the deer only three or four feet—just clear of Lipscomb's shoulders. They could not pull it higher, and witness said to Reed, "I am going to throw my entire weight against it." He waited long enough for Reed to answer—thirty seconds or more—and then witness stepped off the barrel and swung his whole weight on the rope. The rope was as thick as his thumb. Witness believed it would hold his weight easily, and also that of the deer. He had swung on the rope only a moment when it broke, and witness fell to the ground. When he came down he had four or five feet of the rope in his hand. The ends of the rope where it broke were jagged. The barrel he had been standing on was between two and a half and three feet high. Witness is about six feet tall. The deer probably was three or four feet clear of the ground when the rope broke. Witness never had had any experience in hoisting heavy objects before. He never had observed the hoisting of heavy game; knew nothing about the rope used, and was not around the game stand save when he went there to sell to one of his customers who first had come to the poultry stand and then wanted game. Witness until he fell had not noticed how the rope was adjusted. After he fell he noticed it had been through the iron lattice-work running from the upper part of the iron column to the roof. Some of the employés picked him up and placed him on a box. He had the rope in his hands. It was dark and looked like an old rope. Moreland was at this time outside the cashier's office and Grunewald inside. Frank Reed and Joe Ragan got a carriage, and he was taken to the Emergency hospital.
16 It was found his hip had been broken. He was confined to his bed at the hospital or at his house for 123 days, and was confined to the house for 176 days, and had to use a crutch for some time after he got out.

Plaintiff's counsel asked witness what either of the defendants said or did just after the accident had happened.

Defendants' counsel objected unless plaintiff's counsel would say they expected to prove that either of the defendants had made some statement concerning the accident.

Plaintiff's counsel said they asked the question to show that neither of the defendants had done anything for the plaintiff after the fall, nor had even come up to help him, though within 18 or 20 feet, and said they asked the question because the conduct of the defendants could speak as well as words as to the accident.

The court thereupon ruled the question out. Exception noted.

On cross-examination he was asked how the rope was tied to the deer when it was raised, and said it was tied around the deer's neck.

JOSEPH RAGAN testified that he was working for Moreland & Co. the day of the accident, but was now employed at the Government corral at St. Asaphs. He had worked in the fish, poultry, and game business all his life. He saw Lipscomb and Carter tie the rope to the deer. It was tied to the hind legs. Nobody ever heard of hoisting a deer by the neck. The deer weighed 125 or 135 pounds; saw Sardo come up with Frank Reed to help pull up the deer. They couldn't raise the deer, and Reed and Sardo got up on a barrel.

Witness was about 15 feet away when Sardo was hurt, but
17 wasn't looking and didn't see the accident. Witness helped Sardo, and afterward untied the rope and got another rope and hoisted the deer to the ceiling above where it was suspended. He then noticed that the ends where the rope was broken looked as though they had been cut or pulled apart and were torn. The rope was an aged rope. It was black and dark. It was what you would call an inch rope; about as big as witness' thumb. The rope when they wanted to hoist the deer had been thrown through one of the holes in the iron lattice or angle work. At the time of the accident Moreland was at the cashier's box talking to Grunewald. The box is 20 or 22 feet from the game stand and on the opposite side of the aisle. Moreland was the active member of the firm, while Grunewald tended to the books and money. Moreland was a very active and attentive man to his business and observed all that was going on. They hoisted deer, bear, and other game only two or three times a year. The lower part of the cashier's box is made of wood, with glass sides from about three feet above ground. One in it could see on all sides, and could see everything going on at the game stand.

Witness was asked if he saw any block and tackle about the game stand.

Defense objected. Objection sustained and exception noted.

On cross-examination he was asked if he had noticed how the rope was rigged before the accident. Replied that he had not; also had not seen the rope break and Sardo fall. He was then asked how he was sure the rope was through a hole in the iron girder or angle-work, but answered that he didn't know how, but knew it was through the iron-work, and repeated the statement on redirect examination.

18 He was further asked on cross-examination whether it was not in fact over an iron hook which was produced, but responded that it was not, and was through a hole in the iron-work.

Dr. W. P. CARR testified that he was surgeon of the Emergency hospital at the time of the accident and attended Sardo. He had a bad fracture of the fema-. They gained an unusually good union. In such cases and with men of plaintiff's age the results frequently were permanent, and he answered a hypothetical case embracing

points brought out in the case by saying they indicated a probability of a permanent injury.

JOHN T. LIPSCOMB testified that he was in charge of the game stand of Moreland & Co. the day of the accident to Sardo; that they were very busy at the game stand, and the deer was on the floor in the aisle and in the way; that he said to Mr. Moreland that the deer was in their way, and that Moreland replied, I will see that it is gotten out of the way or removed, or words to that effect; that witness then went on about his duties; that later he heard some one about the game stand say to go get a rope at the warehouse to hoist the deer. Witness at this point was asked whether Mr. Moreland or Mr. Grunewald had said this, but replied that he could not say, as he was very busy and didn't pay attention and could not say who made the remark; did not hear Moreland make any remark. There were several persons about the game stand at the time, among them Reed and Sardo, he thought. He thought the colored man, Carter, got the rope and was one of those who helped to adjust it. He thought Frank Reed also helped and maybe Sardo; was not sure, but this was his best recollection. After the rope was
19 procured he heard some one say to run it through one of the holes in the iron lattice-work; could not say who said this nor whether either Moreland or Grunewald said it, as he was very busy with other things about the stand. To the best of his knowledge and belief, the rope was run through the iron lattice-work. After the rope was adjusted Frank Reed and Sardo began to pull on the deer. Witness and Carter helped them by boosting the deer. They couldn't raise the deer. Reed and Sardo then got on a barrel and pulled. They got the deer about three or four feet clear of the ground. Witness put his shoulder under the deer to give Sardo and Reed an "ease-up." The hind quarter of the deer was just clear of witness' shoulder, on which he had been supporting it when the rope broke, and both Sardo and the deer came down. The rope probably was a three-quarter or an inch rope. After the accident he noticed the rope. It was frayed all along nearly its entire length, and was dark and looked as though it had been in use some time. The ends where it broke were rough and jagged. At the time of the accident he saw Mr. Moreland at the cashier's box, talking to Grunewald, his partner. Moreland was in the aisle on the outside and Grunewald inside the box. The cashier's box is about 20 feet from the game stand. Its upper sides are of glass, and one in the box can see all that goes on at the game stand. Witness had worked in the poultry and game business perhaps 20 years; most of the time at stalls in the Centre market. He had not himself been employed in the hoisting of deer, but had observed their hoisting for years and knew the usage or cus-
20 tom usually employed in hoisting deer, bear, and other heavy game in the market. Game was usually hoisted for display purposes two or three times a year, and sometimes fish were strung up.

Q. What is the usage or custom as to the method employed in raising deer, bear, and heavy game at the Centre market?

Objected to. Objection sustained and exception noted.

Q. Is it the general usage to employ a block and tackle in lifting deer and heavy game to the ceiling of the Centre market when it is desired to suspend it there?

Objection sustained and exception noted.

Q. What has been your observation as to the raising of heavy game, and what is the usual method employed?

Objection sustained and exception noted.

On cross-examination witness was asked if he was sure the rope was through the iron lattice-work; replied that he was. Counsel for defense produced a heavy iron hook with round, smooth surface and asked if witness had seen such an hook hanging on the lattice-work. Witness replied that he had seen it hanging there on the day of and before the accident to Sardo. He was asked if the rope might not have been run over that hook instead of through the lattice-work, but replied, No; that, to the best of his knowledge and belief, it was run through a hole in the lattice-work. Jim Carter, the colored man, witness said, hung the rope.

FRANCIS JAVINS testified that he and his brother had twenty stalls in the Centre market for the sale of fish, poultry, and game. Their stalls were next to those of Moreland & Co. There were only two or three firms at a time in the market that dealt in heavy game, and they "dressed" the stalls—that is, raised game above them for display purposes—on an average of about twice a year. Witness had raised deer and bear and other game for his firm often.

21

Q. What is the custom or usage in the business as to the mode of raising deer, bear, etc.?

Objection sustained and exception noted.

Q. In your opinion, would it be safe to raise a deer by throwing a rope that had been used some time through a hole in the iron lattice-work running from the top of the columns to the ceiling?

Objection sustained. Exception noted.

Q. What means do you use in raising deer, bear, etc.?

Objection sustained. Exception noted.

ALBERT TAYLOR testified that he was in the employ of Moreland & Co. as a salesman and general utility man up to within a few weeks of the accident. He had seen block and tackle at the game stand about three years before the accident, and afterward saw block and tackle at the warehouse of the defendants, on B street between Sixth and Seventh streets.

RAYMOND REED testified that he is now employed by Wilkins & Co., butter merchants, in Centre market and on 9th street; had

been for many years employed by R. A. Golden, fish, game, and poultry dealers, in Centre market, and later worked for a time for Moreland & Co., who succeeded R. A. Golden in the business.

Walter Moreland was general manager or superintendent for
22 R. A. Golden. Witness is a brother of Frank Reed. Witness had charge of the game department for R. A. Golden and later for Moreland & Co.; had raised deer and other heavy game for both firms and was familiar with the method used in the Centre market for raising deer, etc.

Q. What is the method usually employed?

Objection sustained. Exception noted.

GEORGE W. MURRAY testified that he was employed for some years by Springmann & Co., expressmen, and had charge for them of the work of raising safes and other heavy objects; knew the strength of ropes and the conditions affecting their tensile strength; at present was employed by Lewis Hopfenmaier, dealers in machinery and heavy junk and warehousemen. In answer to the court, witness testified that he is familiar with the raising of heavy objects weighing from one hundred to one hundred and fifty pounds to a ceiling twenty feet or so overhead and the suspension of such objects in the air at a height overhead; was familiar with this because it is part of his present duties to raise heavy bales of wool and other heavy things to the roof of the warehouse of his employer and suspend them in the air out of the way of mice, etc.

Q. What is the usual method of raising objects weighing 125 to 150 pounds?

Objection overruled; exception noted by defense, and witness responded that wherever the weight was over 100 pounds the method usually employed was by block and tackle, the number of falls being increased with the weight.

23 Witness testified that an inch rope in good condition, if one fall was used, would hold 1,700 pounds, and if five falls were used it would hold over three thousand pounds. If no block and tackle were used, but the rope was run over a smooth, round surface, it ought to stand a weight of one thousand pounds. Witness testified that he had examined the iron column and the iron girder at which the accident to Joseph Sardo was said to have occurred. It was 16 feet 8 inches from the ceiling to the floor of the market-house. The girder was of iron and had been made ornamental by stamping out figures of leaves, etc., through the iron. The iron was about an half inch thick, and the edges where the holes had been stamped out were rough, so they would cut and wear on a rope passed over them.

Q. From your examination would it be safe to raise a deer weighing from 126 to 140 pounds by means of an aged and dark rope passed through the lattice-work?

—. It would be very unsafe. It might be dangerous with a new rope; it would tear it.

Q. Can you tell from the fact that a rope is dark, without making an examination of it, that it is rotten and would be dangerous to use it?

A. No; you could not tell from that that it was rotten, but it might cut even a new rope, to pull a deer up on it over rough-edged iron like that girder-work.

Here the plaintiff rested his case. Counsel for the defense moved that the case be taken from the jury and judgment for costs
24 given for the defendant. The court granted this motion and so instructed the jury, and counsel for the plaintiff noted an exception.

Be it further remembered that each of the separate and several exceptions taken by counsel for the plaintiff to the rulings of the court during the progress of the trial and the exception by counsel for the plaintiff to the instruction of the court to the jury upon the whole evidence to return a verdict for the defendants, as hereinbefore set forth, were so taken by counsel for the plaintiff then and there, before the jury retired, separately and severally, and said exceptions were then and there separately and severally duly noted upon the minutes of the justice presiding at the trial, and counsel for the *defendant* then and there prayed the court to sign and seal this bill of exceptions, to have the same force and effect as if each of the said exceptions was separately and severally set forth in a separate bill of exceptions, and at the request of said counsel for the plaintiff the same is accordingly signed and sealed and made a part of the record in this cause, now for then, this 22d day of June, 1900.

CHAS. C. COLE. [SEAL.]

We have no objection to the signing of this as the bill of exceptions.

BIRNEY & WOODARD,
For Defendant-.

We agree.

CHAS. MAURICE SMITH.
CHAS. H. MERILLAT.

25 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 24, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 43322, at law, wherein Joseph E. Sardo is plaintiff and Walter M. Moreland *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 28th day of June, A. D. 1900.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1008. Joseph E. Sardo, appellant, *vs.* Walter M. Moreland and Frederick L. Grunewald. Court of Appeals, District of Columbia. Filed Jul- 14, 1900. Robert Willett, clerk.